

**2006 OVERSEAS LAWYERS
QUALIFICATION EXAMINATION**

**HEAD V: PRINCIPLES OF
COMMON LAW**

Friday, 15 December 2006



Head V: PRINCIPLES OF COMMON LAW

TEST PAPER

15 December 2006

Instructions to Candidates:

- 1. The duration of the examination is 2½ hours (which includes 30 minutes dedicated reading time).**
- 2. You are not permitted to bring into the examination any books, documents or other materials.**
- 3. At the commencement of the 30 minutes reading time, you will be supplied with 10 questions, together with an English dictionary and a copy of Mozley and Whiteley's law dictionary by J. E. Penner.**
- 4. You will be permitted 30 minutes to consider the test questions, choose 4 questions upon which to be examined (one from each of Parts A, B, C and D of the test paper) and make notes on the questions supplied.**
- 5. At the expiry of the 30 minutes reading time, you will be called before a panel of between 2 and 4 Examiners who will assess your understanding of the topic or subject concerned.**
- 6. Where a question has two sections, you must answer both sections of the question. Each question is worth 25 marks.**
- 7. Wherever possible, support your answer with reference to decided cases and legislation.**
- 8. During the oral examination, you may consult only the notes that you have made during the 30-minute reading time on the questions supplied.**
- 9. Do not take this question paper with you when you leave the examination room.**

2006 Overseas Lawyers Qualification Examination

Head V: Principles of Common Law

Part A (Constitutional Law & Introduction to Legal System)

Question 1 (25 marks)

“Hong Kong courts, including the Court of Final Appeal, have power to interpret the provisions of the Basic Law. However, the ultimate power of interpretation of the Basic Law is vested in the Standing Committee of the National People’s Congress.”

Explain and critically examine the above statement.

Question 2 (25 marks)

Article 84 of the Basic Law states that “the courts of the Hong Kong Special Administrative Region shall adjudicate cases in accordance with the laws applicable in the Region.....and may refer to precedents of other common law jurisdictions.”

To what extent do you think the courts in Hong Kong are still influenced by the decisions of the higher courts of England?

End of Part A

Part B (Law of Contract)

Question 3 (25 marks)

Mr. Fung sells forklifts and related machines. He sent **Mr. Li** a fax which read: "Can offer latest Lemon model XXX heavy duty forklifts at HK\$488,888.00 each." **Mr. Li** replied by fax: "Will have five. Need delivery by next Friday."

Mr. Fung then wrote **Mr. Li** a letter: "Thank you for your fax, which we are processing."

Advise Mr. Li as to the legal position on each of the following alternative assumptions:

- (a) **Mr. Fung** called Armstrong, the removal and delivery specialist company, to deliver the forklifts to **Mr. Li** but before people from Armstrong arrived to pick up the forklifts, **Mr. Li** telephoned to say that he no longer needed them.
- (b) **Mr. Fung** failed to deliver any forklift to **Mr. Li**.

Would your advice be different if Mr. Fung had sold forklifts to Mr. Li before? Again, would your advice be different if Mr. Fung had written to Li to say instead: "Thank you for your fax. We can only sell you three forklifts by next Friday but can build another two and deliver within 2 months."

Question 4 (25 marks)

(This question has 2 sections, (a) and (b). Answer BOTH section (a) and (b))

Section (a)

On Monday, **Mr. Chan** signed a simple tenancy agreement with **Mr. Lee** to let his flat in Causeway Bay to **Mr. Lee**. The letting is for a term of 2 years, starting next Wednesday. **Mr. Chan** forgot to obtain any rental security on signing. On Friday, **Mr. Lee** telephoned to say he had found alternative accommodation and would not be renting **Mr. Chan's** flat.

Advise Mr. Chan what his legal remedies are.

Section (b)

Mr. Chan also owns and lives in a private house in Clear Water Bay with a big garden. He hired Reliance Building Contractors Ltd. to build him a swimming pool in the garden. The contract provided that the length of the pool would be 500 metres. When work was completed, however, **Mr. Chan** found, to his utter dismay, that the pool was in fact 480 metres long. An independent engineer informs **Mr. Chan** that to extend the pool to 500 metres long would require demolition and reconstruction of the existing pool.

Again, advise Mr. Chan what damages he can seek from Reliance.

(See the next page for a continuation of Part B)

Question 5 (25 marks)

Mr. Cheng wanted to open a high class restaurant in Central and executed a 5-year lease of a Ground Floor unit in a commercial building owned by Fantastic Development Holdings Limited. **Mr. Cheng** then entered into a contract with **Mr. Fong**, a building contractor, for **Mr. Fong** to build the restaurant at the cost of HK\$3 Million. **Mr. Cheng** and **Mr. Fong** agreed the work would take 2½ months and **Mr. Cheng** would pay **Mr. Fong** one third of the cost at the start of the contract and the balance upon completion.

Mr. Fong started work on 1 June and by 1 July he had completed only 30% of the work. Then on 2 July a severe and unexpected typhoon caused extensive flooding in the unit and destroyed all the work done by **Fong** and the kitchen equipment installed.

Assuming neither party took out insurance cover against damages by storm/ typhoon, advise Mr. Cheng and Mr. Fong of their respective rights and obligations. Would your advice be different if Mr. Fong had in fact completed 50% (and not 30%) of the work?

Assuming the same facts as above but the typhoon did not occur and **Mr. Fong** completed his work on time. Instead, **Mr. Cheng** found that the Drainage Services Department of the Government of HKSAR had started excavating and working on the entire section of the road fronting the restaurant as part of a drain pipe renewal and replacement programme. The work is to last 4 months. It is keeping customers away and the restaurant from operating.

Assuming the lease is silent on this issue, can Mr. Cheng terminate the lease without liability by claiming frustration?

End of Part B

Part C (Introduction to Law of Torts)

Question 6 (25 marks)

Fiona was married with ten children. Her husband, **Joseph**, underwent a vasectomy conducted by the Medical Sterilisation Centre. Both **Fiona** and **Joseph** were told by the centre that the operation was successful and that **Joseph**'s sperm count was nil and that they no longer needed any contraceptives. Acting on the centre's advice, **Fiona** ceased to take her contraceptives pills. She became pregnant and gave birth to healthy twins. The family was ecstatic to see the twins.

Joseph had a girlfriend, **Annie**. She knew about **Joseph**'s vasectomy. **Joseph** also had sex with her and she also became pregnant. Her pregnancy was a difficult one and while she was in the sixth month of pregnancy she became very ill and suffered a lot of pain. She went to XY Hospital, a hospital financially aided by the government. The hospital gave her some new medicine. The medicine alleviated the pain. However, the child was born with some defects.

Fiona wishes to sue the Medical Sterilisation Centre for the physical discomfort she suffered from her unwanted pregnancy and the financial costs of bringing up the child. **Annie** wants to sue the government and the manufacturer of the medicine, as well as XY Hospital.

Advise Fiona and Annie. You may assume any facts for the purposes of answering this question.

(See the next page for a continuation of Part C)

Question 7 (25 marks)

John Lai is a famous Cantonese singer. He is regarded as a role model for young people in Hong Kong and has participated in several fundraising events for charity. He recently opened a centre to help young, aspiring singers in Hong Kong, providing them with musical instruments and a place to practice, free of charge.

An article is published in Hong Kong Cine-News referring to **John Lam**, a little known singer, who has appeared in pornographic films in order to make money. This article is the first in a series of three articles on **John Lam**. The other two articles will be published in later editions of Hong Kong Cine-News. The article gives graphic details about the films in which **John Lam** has appeared and states that it is unimaginable for a singer such as him to participate in such activities. When people read the article about **John Lam**, they mistakenly think that the article is about **John Lai**, the famous Cantonese singer. **John Lai** is humiliated and embarrassed by this inference. Moreover, young singers are reluctant to go to his new centre and several charitable organizations have told him that they would not like him to do fundraising concerts this year. Several paying concert organizers have backed out of pre-existing concert arrangements. Hong Kong Cine-News stories about sex and women have made it very popular amongst teenagers and it deliberately publishes stories without worrying about the truth or falsity in order to boost sales.

Advise whether John Lai has a case in defamation against the publisher of Hong Kong Cine-News. What kind of remedies, if at all, is John Lai entitled to?

(See over the page for a continuation of Part C)

Question 8 (25 marks)

(This question has 2 sections, (a) and (b). Answer BOTH section (a) and (b))

Section (a)

The Occupiers' Liability Ordinance imposes a common duty of care on the occupier towards all his visitors. **Explain the nature of this duty.**

Section (b)

Sylvia lives in an apartment in Jackson Heights. Her husband is a carpenter. She invites her colleagues and their children for her son's poolside birthday party. Entry to the pool is by payment of \$20. While the adults are having a party at the pool, the children stay back at **Sylvia's** apartment to have fun and games. They were told not to go into the master bedroom. **Desmond**, one of the children, however, gets into the master bedroom to use their bathroom. When he comes out, he finds **Sylvia's** husband's carpentry toolbox. **Desmond** is very inquisitive. He opens the toolbox, and takes out a screwdriver. With his wet hands, he puts the screwdriver into one of the electric sockets and is electrocuted. Other children start shouting and the information reaches **Desmond's** mother. **Desmond's** mother, who was in the pool, rushes to get out of the pool. As she does so, she slips by the side of the pool, as the poolside surface was greasy. Both **Desmond** and his mother are admitted to hospital. They recover quickly. However, they now want to sue **Sylvia** and the management of Jackson Heights.

Advise Sylvia, Desmond and Desmond's mother.

End of Part C

Part D (Criminal Law)

Question 9 (25 marks)

Ah Ming was having an affair with his secretary. One night after work he took his secretary out for a drive in his car in the hills in New Territories. They got into a quarrel. **Ah Ming** did not see **Ah Cheung** crossing the road and hit him. **Ah Ming**, frightened that his wife would find out his affair with the secretary, did not stop. He could see blood on the windscreen and, in the rearview mirror, **Ah Cheung** was lying by the side of the road and not moving. **Ah Cheung** was found dead the next morning. He had died from massive loss of blood.

Ah Ming is now in police custody and wants to know from you, his solicitor, whether he would be charged with murder.

Question 10 (25 marks)

(This question has 2 sections, (a) and (b). Answer BOTH section (a) and (b))

Section (a)

“A sees B drowning and is able to save him by holding out his hand. A abstains from doing so in order that B may be drowned, and B is drowned. A has committed no offence.”
[Stephen’s Digest of the Criminal Law (fourth edition, 1887)]

Do you agree with the above statement? Discuss the criminality (if any) of A. Would your answer be different if A had been a lifeguard employed at a swimming pool.

Section (b)

In a rage, C repeatedly stabbed D. D was taken to the hospital. While in hospital, D fell unconscious and was placed on a life support machine. After 6 days D was diagnosed by Dr. E as being in a persistent vegetative state with no hope of recovery. Dr. E accordingly disconnected the machine and D died.

Discuss the criminality (if any) of C.

End of Test Paper

